

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH**

**ORIGINAL**

**UNITED STATES OF AMERICA,**

**v.**

**ELLSWORTH COLBERT,  
Defendant.**

**Criminal No. 2012-CF1-3958**

**The Hon. Thomas Motley**

**Trial Date: January 7, 2013**

**UNITED STATES' MOTION TO DISQUALIFY DAMON COLBERT AS DEFENSE COUNSEL**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court to conduct an inquiry to determine whether Damon Colbert, the son of Defendant Ellsworth Colbert, must be disqualified from representing his father, Defendant Colbert, in this case. The United States submits that Damon Colbert's purported representation of Defendant Ellsworth Colbert violates Rule 3.7 of the District of Columbia Rules Professional Conduct, as Damon Colbert is a necessary government trial witness, and that Damon Colbert's representation poses a potential and/or actual conflict of interest. Further, the United States submits that even if Defendant Ellsworth Colbert, and any other witness, were to execute knowing, voluntary and intelligent waivers of the conflict issues, the conflicts would remain, thereby necessitating disqualification of Damon Colbert.

**I. FACTUAL BACKGROUND**

At trial, the United States expects its evidence to show that at approximately 10:15 a.m. on Sunday, March 4, 2012, Defendant Ellsworth Colbert stabbed and killed decedent Robert Wright during an altercation initiated by Defendant Colbert. The incident occurred in the 3600 block of Highwood Drive SE, in Washington, DC.

During the course of an investigation begun that morning, a number of witnesses were interviewed regarding the incident. It was learned by officers that Defendant Colbert confronted the decedent in the 3500 block of Pope Street SE, where Defendant Colbert lived, as the decedent was walking a dog. Defendant

Colbert emerged from his house and confronted the decedent about allowing the dog to get near his yard. Defendant Colbert approached the decedent and dog while holding a knife and began to argue with the decedent. Defendant Colbert then either walked past the decedent or followed the decedent to [REDACTED] Highwood Drive SE where Defendant Colbert confronted the caretaker of the dog.

While in front of [REDACTED] Highwood Drive SE, Defendant Colbert and the decedent engaged in a verbal altercation while Defendant Colbert held a walking stick in one hand and an open blade knife in the other hand. During the altercation, Defendant Colbert stabbed the decedent in the neck. The decedent then walked to the rear of [REDACTED] Highwood Drive SE. As the decedent did so, Defendant Colbert said aloud, "I told you motherfucker, don't fuck with me," and "I'm going to get my son Damon to fuck you up, Rob." Moments later, the decedent re-emerged from the rear of [REDACTED] Highwood Drive with a shovel in hand. Defendant Colbert struck the decedent with the walking stick and stabbed the decedent a number of times with the knife. At some point during the physical altercation, the two separated and the decedent collapsed to the ground, unconscious. Defendant Colbert then walked to his house at [REDACTED] Pope Street SE and went inside. Robert Wright was taken to Prince George's County Hospital where he was pronounced dead, having suffered eight sharp force injuries.

Officers from the Washington, DC Metropolitan Police Department arrived on the scene of the stabbing shortly following the incident. Upon receiving information from eyewitnesses that the person responsible for the stabbing lived at [REDACTED] Pope Street SE, officers walked from the stabbing scene to that address. When officers arrived at [REDACTED] Pope Street, they interacted with Defendant Colbert, who made a number of statements about the incident. One of those statements was, "the same motherfucker who tried to stab Damon tried to hit me with a shovel and I fucked his ass up." Defendant Colbert was arrested and charged with the killing of Robert Wright at 11:01 a.m. on that day, Sunday, March 4, 2012.

At approximately 2:57 p.m. on Sunday, March 4, 2012, the Metropolitan Police Department received a two page facsimile, consisting of a cover sheet and a one page letter on the letterhead of Attorney James



W. Beane Jr., dated March 4, 2012. The letter was purportedly signed by James W. Beane, Jr., referred to Defendant Colbert as "my client," and advised officers that Mr. Beane was asserting his client's, Defendant Colbert's, constitutional rights to remain silent. In the letter Mr. Beane also demanded that all questioning of Defendant Colbert cease. Per the fax byline imprinted on the top of the two sent pages, the fax was sent from fax number ( [REDACTED] ) at the Hyatt Chesapeake resort in Cambridge, Maryland. "Damon Colbert, Esq." was copied on the letter. The next day, Monday, March 5, 2012, Defendant Colbert was presented in this Court and charged by complaint with one count of Murder II While Armed. At that hearing, James W. Beane, Jr., was present and entered his appearance on behalf of Defendant Colbert.

On March 14, 2012, Damon Colbert wrote a letter to the Judge assigned to the above-captioned case, The Honorable Thomas J. Motley. The letter was attached as "Exhibit A" to defense counsel James W. Beane's "Motion For Review of Pre-Trial Detention and Release of Defendant to Third Party Custody," filed on April 9, 2012. In Damon Colbert's letter to the Court, Damon Colbert claimed to have talked to his father, Defendant Colbert, the previous day. Damon Colbert stated "[Defendant Colbert] showed me a scar on his head that he said resulted from his being struck on the head repeatedly with a shovel on March 4, 2012, and he said that hospital personnel told him on March 4 that he sustained a concussion. During our conversation yesterday, he could not recall certain basic information that I have never noticed his being unable to recall before yesterday."

Upon the initiation of a grand jury investigation of the death of Robert Wright, a grand jury subpoena was issued by government counsel on April 12, 2012, for the testimony of Damon Colbert. At some point following the issuance of that subpoena, government counsel received a telephone call from Samuel Bogash, Esq., informing government counsel that Mr. Bogash represented Damon Colbert as a grand jury witness. Mr. Bogash indicated that the April 12, 2012 subpoena date was inconvenient and Damon Colbert's grand jury appearance was rescheduled to April 24, 2012.

On April 24, 2012, Damon Colbert testified in the grand jury in the above-captioned case. Damon



Colbert's testimony placed in context the statements made by Defendant Colbert during the incident when Defendant Colbert said aloud, "I'm going to get my son Damon to fuck you up, Rob," as well as Defendant Colbert's statement following the incident that, "the same motherfucker who tried to stab Damon tried to hit me with a shovel and I fucked his ass up."

Damon Colbert testified in the grand jury that likely in 1996 when Damon Colbert was 16 years old, he, Damon Colbert, engaged in a physical altercation with the decedent where Damon Colbert punched the decedent a number of times in front of two others, causing the decedent to fall to the ground, embarrassing the decedent badly. Later, the same day as that altercation, the decedent came to the Colbert home at [REDACTED] Pope Street SE, where Damon Colbert was eating dinner with his grandmother. According to Damon Colbert's testimony, the decedent stood outside of the house shouting and brandishing a knife, taunting Damon Colbert and daring him to come outside to engage in a further altercation. Damon Colbert testified that, at the behest of his grandmother, he declined to re-engage the decedent in a further altercation.

Damon Colbert further testified in the grand jury that on the morning of Sunday, March 4, 2012, he, Damon Colbert, was at the Hyatt Chesapeake resort in Cambridge, Maryland, when he was informed by telephone that his father, Defendant Colbert, had been arrested in regard to the incident resulting in the decedent's death. Damon Colbert admitted in the grand jury that he did speak to Defendant Colbert by telephone on the morning of the murder, but claimed an attorney client privilege with regard to the content of that conversation or conversations.

In mid-June of 2012, while government counsel were attempting to place another witness under subpoena, government counsel learned that Damon Colbert claimed to represent that other witness as well. Government counsel forwarded a subpoena to Samuel Bogash, Esq., to forward to the other witness through



Damon Colbert.<sup>1</sup> That witness was later represented not by Damon Colbert, but rather by another attorney.

Sometime during the morning hours of November 9, 2012, undersigned government counsel made a telephone call to Samuel Bogash, Esq. Undersigned counsel advised Mr. Bogash that the trial of the above-captioned matter was scheduled for early January and that it was necessary to place his client, Damon Colbert, under subpoena as a government fact witness for trial. Mr. Bogash agreed to accept service of a trial subpoena on behalf of, and to forward it to Damon Colbert. Later that day, at 4:10 p.m., undersigned government counsel emailed to Mr. Bogash a trial subpoena addressed to Damon Colbert as a PDF document. On some day thereafter, when undersigned and Mr. Bogash saw one another, Mr. Bogash told undersigned that the trial subpoena had been forwarded to Damon Colbert.

On December 4, 2012, government counsel received an email from Damon Colbert, containing an attached document styled "Motion to Quash Non-Party Damon Colbert of the United States of America's Subpoena for Production of Evidence to Google Inc." The document was signed by Damon Colbert, as "Counsel for Defendant." In that motion, Damon Colbert asserts that he entered his appearance in this case at 4:48 p.m. on November 9, 2012. Having not previously received any notice of Damon Colbert's entry of appearance for his father as defense counsel, government counsel checked the CourtView docket of the above-captioned case, and saw that Damon Colbert had entered an appearance as defense counsel in this case on November 9, 2012.

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1. This circumstance posed something of a problem. That is, since the other witness was represented by counsel, service of a grand jury subpoena would normally have been forwarded to the other witness' counsel. However, since the other witness' purported counsel, Damon Colbert, was himself a represented fact witness, the subpoena for the other witness was sent to counsel for Damon Colbert, Samuel Bogash, Esq., rather than to Damon Colbert directly. As the Court can see here, Damon Colbert appears to be needlessly insinuating multiple layers of conflict of interest.



## **II. ARGUMENT**

### **A. Damon Colbert's purported representation of Defendant Ellsworth Colbert violates Rule 3.7 of the District of Columbia Rules of Professional Conduct.**

Rule 3.7 of the District of Columbia Rules of Professional Conduct states that “(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where: (1) The testimony relates to an uncontested issue; (2) The testimony relates to the nature and value of legal services rendered in the case; or (3) Disqualification of the lawyer would work substantial hardship on the client.” D.C. RPC Rule 3.7.

At the trial of this case, Damon Colbert will be a necessary fact witness who will be called in the government's case in chief to explain Defendant Colbert's statements during and after the incident resulting in the death of Robert Wright. That is, the testimony of Damon Colbert will be necessary to place into context Defendant Colbert's statements that “I'm going to get my son Damon to fuck you up, Rob,” and “that same motherfucker who tried to stab Damon hit me with a shovel and I fucked his ass up.” Damon Colbert's testimony regarding his prior altercation with the decedent years ago is necessary to explain, and to give context to, Defendant Colbert's statements, as well as to establish Defendant Colbert's knowledge of and familiarity with the decedent. Damon Colbert's testimony is further necessary to establish Defendant Colbert's motive, bias and prior existing animus towards the decedent. Moreover, Damon Colbert's testimony is necessary to establish Defendant Colbert's admissions made to Damon Colbert following his arrest. Notwithstanding Damon Colbert's refusal to testify to those admissions in the grand jury, speciously claiming that they are covered by an attorney-client privilege, the government intends to elicit those statements during the trial examination of Damon Colbert.<sup>2</sup>

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2. The Government intends to litigate Damon Colbert's claim of attorney-client privilege in a separate pleading, but notes here that, to the extent Damon Colbert claims that he is bound by an attorney-client privilege from relaying statements made by his father to him regarding the case, Damon Colbert has already breached that privilege at least twice. That is, Damon Colbert breached the asserted privilege when he relayed the substance of Defendant Colbert's statements to him in his letter to the Court dated March 14,



Damon Colbert would likewise fail at any attempt to argue that because he acted as his father's attorney by discussing the facts of the incident with Defendant Colbert prior to Defendant Colbert's arrest, he must now be regarded as an unavailable witness and, therefore be precluded from testifying as a witness in the case. The Court's determination of whether Defendant Colbert's statements to his son on the day of the incident are privileged communications is not relevant to this inquiry. Rule 3.7 "is concerned with instances where *trial counsel* takes the witness stand." Coleman v. United States, 948 A.2d 534, 546 (D.C. 2008) (emphasis in original) (citing Robinson v. United States, 32 F.2d 505 (8<sup>th</sup> Cir. 1928)). As Damon Colbert is a necessary witness in the trial of the case, he is precluded by Rule 3.7(a), from acting as an advocate at the trial.

A search revealed no direct District of Columbia precedent addressing this issue, that is, whether in a felony jury trial, a necessary government witness may be permitted to represent the defendant. However, state appellate courts have examined the issue and found that disqualification of defense counsel was necessary as defense counsel would likely be called as a witness, either for the government and for the defendant. See, e.g., People v. Swanson, 43 A.D. 3d 1331, 1332, 844 N.Y.S.2d 521, 522 (N.Y.A.D. 4<sup>th</sup> Dept. 2007) (advocate-witness rule required disqualification of defense counsel, where there was significant possibility that counsel would be called to testify with respect to disputed issue of fact); Gonzalez v. State, 117 S.W. 3d 831 (Tex. Crim. App. 2003) (disqualification of defendant's counsel of choice warranted, based on counsel's possible dual role as both advocate and witness with respect to allegations that defendant attempted to bribe State's key witness); People v. Pasillas-Sanchez, 214 P.3d 520 (Colo. App.2009) (defense counsel's conflict of interest, resulting from fact that he would have to provide testimony on contested issue at trial for murder of defendant's girlfriend, was actual and substantial, and could not be waived by defendant's consent; attorney would testify that when representing defendant in prior drug prosecution,

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2012. Upon information and belief, Damon Colbert further breached the asserted privilege by relaying Defendant Colbert's version of events to at least one other person.



girlfriend provided information that related to defense theory that girlfriend committed suicide, counsel was sole source of information other than defendant, independent counsel determined that testimony could be critical and determinative if believed by jury, and integrity of judicial system would be undermined by allowing counsel to proceed as advocate witness. Rules of Prof. Conduct, Rules 1.7, 3.7(a)). In Pasillas-Sanchez, the Colorado Court of Appeals reasoned that “[t]he very purpose of [analogous Rule 3.7] is to avoid the confusion that results for a jury when the lawyer acts in the dual roles of witness and advocate.” Id., 214 P.3d at 525 (citing Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell, 239 F. Supp.2d 1170, 1173 (D. Colo. 2003)).

Further, Damon Colbert would not prevail on any argument made under Rule 3.7(a)(3), claiming that his disqualification would work substantial hardship on the client. Defense counsel James W. Beane, Jr. has represented Defendant Colbert in this case since the very day that Defendant Colbert stabbed and killed Robert Wright, Sunday, March 4, 2012. That is, even before the investigation of the case was concluded on the afternoon of March 4, 2012, defense counsel Beane faxed to MPD detectives a letter notifying MPD personnel that he, Mr. Beane, represented Defendant Colbert. In that same letter, Mr. Beane further notified MPD that he, Mr. Beane, was asserting Defendant Colbert’s right to remain silent and that all attempts at questioning Defendant Colbert should cease. On the day that Defendant Colbert was presented in Court in this case, March 5, 2012, defense counsel Beane was present and represented Defendant Colbert, having been retained to do so rather than having been appointed by the Court. Indeed, Damon Colbert only entered his appearance as defense counsel in the case on November 9, 2012, nearly a month after Defendant Colbert was indicted and arraigned, and coincidentally, the same day that Damon Colbert’s own counsel, Samuel Bogash, Esq., was notified that Damon Colbert was being placed under subpoena to be a government’s fact witness at the trial of this case.<sup>3</sup> In short, Defendant Colbert has been zealously represented by counsel of his

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3.. It should be further noted that a hearing of the above-captioned case was held on that same day, Friday, November 9, 2012. To the extent of government counsel’s knowledge, Damon Colbert was not present at

choosing since before a Complaint was even filed in this case. Disqualification of Defendant Colbert's son from acting as trial counsel would not work a substantial hardship upon Defendant Colbert.

**B. Damon Colbert's representation of Defendant Ellsworth Colbert poses a potential and/or actual conflict of interest, which cannot be remedied by waivers by Defendant Ellsworth Colbert and any other witness.**

The United States further asserts that there are potential and/or actual conflicts of interest brought about by Damon Colbert's interactions with his father, Defendant Ellsworth Colbert, his own status as a government's fact witness at trial, and his interactions and claim of representation of another government fact witness at trial. The United States submits that even if Defendant Ellsworth Colbert and any other witness were to execute knowing, voluntary and intelligent waivers of these conflict issues, the conflicts shall remain, thereby further necessitating the disqualification of Damon Colbert.

A defendant has the right to counsel who has the ability and willingness to advocate fearlessly and effectively on his or her behalf and a counsel whose loyalty is undiluted by conflicts of interest. Derrington v. United States, 681 A.2d 1125, 1133 (D.C. 1996). Accordingly, when a lawyer represents "multiple clients having potentially differing interests, he must weigh carefully the possibility that his judgment may be impaired or his loyalty divided if he accepts or continues the employment," and he is "to resolve all doubt against the propriety of the representation." Code for Professional Responsibility, Ethical Consideration 5-15. D.C. Rule of Professional Conduct 1.7 provides in relevant part:

- (a) A lawyer shall not advance two or more adverse positions in the same matter.
- (b) Except as permitted by paragraph (c) below, a lawyer shall not represent a client with respect to a matter if:

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that hearing, much less was his entry of appearance put on the record, or even brought to the attention of either the Court or government counsel.



- (1) That matter involves a specific party or parties, and a position to be taken by that client in that matter is adverse to a position taken or to be taken by another client in the same matter, even though that client is unrepresented or represented by a different lawyer;
  - (2) Such representation will be or is likely to be adversely affected by representation of another client;
  - (3) Representation of another client will be or is likely to be adversely affected by such representation; or
  - (4) The lawyer's professional judgment on behalf of the client will be or reasonably may be adversely affected by the lawyer's responsibilities to or interests in a third party or the lawyer's own financial, business, property, or personal interests.
- (c) A lawyer may represent a client with respect to a matter in the circumstances described in paragraph (b) above if each potentially affected client provides consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation.

Here, it is apparent to the United States that Damon Colbert's representation of Defendant Colbert violates section 1.7. That is, to the extent that Damon Colbert represents his father, Defendant Colbert, and has represented another a witness in the case, as well as the fact that he himself will be a fact witness in the case, those interests are adverse to one another. Damon Colbert's professional judgement on behalf of his client, Defendant Colbert, will be or reasonably adversely affected by his responsibilities or interests to a third party, that is the other witness, and/or his own personal interest as a witness in the case.

When a conflict becomes apparent to the government, the government has a duty to bring the issue to the Court's attention and, if necessary, move for disqualification of counsel. See United States v. Tatum, 943 F.2d 370, 379-80 (4th Cir. 1991). Likewise, whenever a trial court knows or reasonably should know that a potential conflict of interests exists, it must initiate an inquiry. See Cuyler v. Sullivan, 446 U.S. 335, 346-47 (1980); Holloway v. Arkansas, 435 U.S. 475, 484-85 (1978).

Damon Colbert must be disqualified from representing Defendant Ellsworth Colbert in this case

because Damon Colbert's representation of Defendant Colbert poses a potential and/or an actual conflict of interest, and his representation of Defendant Colbert would affect Defendant Colbert's right to effective assistance of counsel. A criminal defendant's Sixth Amendment right to effective assistance of counsel includes the right to counsel who is unimpaired by conflicting loyalties. Duncan v. State of Alabama, 881 F.2d 1013 (11th Cir. 1989); see also Wood v. Georgia, 450 U.S. 261, 271 (1981); Holloway, 435 U.S. at 481; United States v. Ramsey, 661 F.2d 1013, 1017 (4th Cir. 1981), cert. denied, 455 U.S. 1005 (1982). The United States Supreme Court has acknowledged that "counsel owes the client a duty of loyalty and a duty to avoid conflicts of interest," which is "perhaps the most basic of counsel's duties." Strickland v. Washington, 466 U.S. 668, 690, 692 (1984).

The Court is not required to depend solely upon the good judgment and good faith of a defense counsel to resolve matters of actual or potential conflict of interests. In fact, once the trial court is alerted by objection from one of the parties to the case, it has an independent duty to investigate potential and actual conflicts of interest to insure that criminal defendants receive a trial that is fair and does not contravene the Sixth Amendment. Wheat v. United States, 486 U.S. 153, 159, 161 (1988). The trial court must initiate an inquiry if it knows or reasonably should know that a potential conflict of interest exists. Cuyler, 446 U.S. at 346-47; see also Holloway, 435 U.S. at 484-85 (in which the Court held that the trial court's failure to appoint separate counsel, or to ascertain whether the risk of conflict was too remote to warrant appointment of separate counsel in a case of multiple representations, violated the Sixth Amendment right to effective assistance of counsel).

In this case, Damon Colbert's representation of his father poses a successive conflict of interest, as Damon Colbert previously claimed to represent another witness in the case. The test for deciding whether a so-called "successive conflict of interest" exists is whether the matter in which an attorney represents a current client is "substantially related" to the matter in which he represented a former client. Childress v. United States, 731 F. Supp. 547, 550 (D.D.C. 1990)(citing National Souvenir Center v. Historic Figures, Inc.,



Here, Damon Colbert's earlier claim that he represented another witness in the same matter, is substantially related to the matter now before the Court in which Damon Colbert claims to represent Defendant Ellsworth Colbert. Id., Childress, 731 F. Supp at 549 (defense counsel's representation of a co-conspirator in an earlier, related proceeding created a potential conflict of interest that required the attorney's disqualification in a criminal conspiracy prosecution). It is the potential for a conflict rather than the actual existence of a conflict which is critical to the court's determination. Id. at 549-50; United States v. Kenney, 911 F.2d 315, 321 (9th Cir. 1990). Accordingly, Damon Colbert's representation of Defendant Colbert conflicts with the interest of another witness in this case.

Damon Colbert would not prevail on an argument that his disqualification would deprive Defendant Colbert of his right to counsel of choice. In Wheat, the Supreme Court pointed out that a defendant does not have an absolute right to counsel of his choice, and that there are other factors that a Court must consider when adjudicating a potential conflict of interest. Id. 486 U.S. 153, 159. "[T]he essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than ensure that a defendant will inexorably be represented by the lawyer whom he [or she] prefers." Id.

Moreover, there has been no indication whatsoever that Defendant Colbert has any dissatisfaction with attorney of record James W. Beane, Jr. Indeed, Mr. Beane has represented Defendant Colbert since before the conclusion of the police investigation in this case. All indications point to a conclusion that Mr. Beane is representing his client zealously and effectively, and that he continues to enjoy the confidence of his client.

Even if Damon Colbert were to obtain waivers from Defendant Colbert and any other witness in order to continue any representation during this case, this Court should still disqualify him. As the Supreme Court held in Wheat, the trial court "must be allowed substantial latitude in refusing waivers of conflicts of

interest not only in those rare cases where an actual conflict may be demonstrated before trial, but in the more common cases where a potential for conflict exists which may or may not burgeon into an actual conflict as the trial progresses.” Id. 486 U.S. at 163. See also id. at 162 (“where a court justifiably finds an actual conflict of interest, there can be no doubt that it may decline a proffer of waiver”); In re Grand Jury Proceedings, 859 F.2d 1021, 1023 (1st Cir. 1988) (court may refuse to accept defendant’s waiver of conflict-free counsel); United States v. Moscony, 927 F.2d 742, 749 (3rd Cir. 1991) (“the trial court has an institutional interest in protecting the truth-seeking function of the proceedings over which it is presiding by considering whether the defendant has effective assistance of counsel, regardless of any proffered waiver”); see also Childress, 731 F. Supp. 547, 549 n.3 (where court disqualified lawyer even though former client had signed a waiver).

Further, this Court should disqualify Damon Colbert from these proceedings because if Defendant Colbert is ultimately convicted in this case and he later demonstrates that “an actual conflict of interest adversely affected his lawyer’s performance,” the Sixth Amendment will warrant reversal of that conviction even if the defendant does not now object to representation by Damon Colbert. Douglas v. United States, 488 A.2d 121, 136 (D.C. 1985).

Finally, any claim that Damon Colbert may make that the Sixth Amendment protects Defendant Colbert’s right to counsel of his choice would lack merit. The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.” U.S. Const. XI Amend. This right, however, is not absolute. Instead, “the essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than ensure that a defendant will inexorably be represented by the lawyer whom he prefers.” Wheat, 486 U.S. at 159. The presumption in favor of a defendant’s counsel of choice “may be overcome not only by a demonstration of an actual conflict but by a showing of a serious potential for conflict.” Id. at 164. This Court must disqualify Damon Colbert from representing his father, Defendant Ellsworth Colbert.



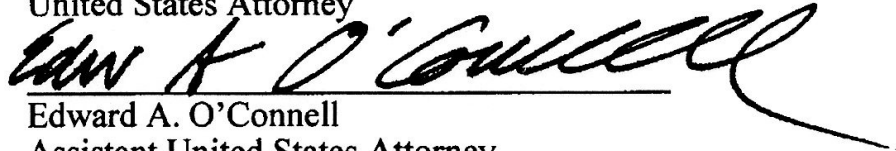
### III. CONCLUSION

WHEREFORE, for the foregoing reasons, and in the interest of the orderly administration of justice, the United States respectfully requests that the Court grant this motion and enter an order disqualifying Damon Colbert, as counsel for his father, Defendant Ellsworth Colbert.

Respectfully submitted,

RONALD C. MACHEN JR.  
United States Attorney

By:

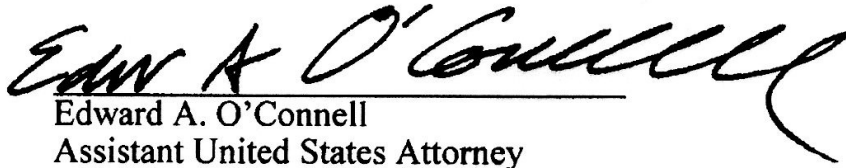
A handwritten signature in black ink, appearing to read "Edw A O'Connell", written over a horizontal line.

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Filed: December 18, 2012

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have caused copies of the foregoing to be served by email upon James W. Beane, Jr., and Damon Colbert, this 17<sup>th</sup> day of December, 2012.

  
Edward A. O'Connell  
Assistant United States Attorney